

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 889 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MAGANBHAI SIBABHAI SIMARIYA

Appearance:

MR BD DESAI APP for appellant - State
MR GIRISH D BHATT for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS and
MR.JUSTICE A.M.KAPADIA
Date of decision: 22/03/99

ORAL JUDGEMENT (Per A.M. Kapadia, J.):

1. Respondent herein was tried by learned Special Judge, Bhavnagar, in Special Case No. 1 of 1987 for commission of offence punishable under Section 5 (2) of the Prevention of Corruption Act ('the Act' for short) and under Sections 161 and 165 of the Indian Penal Code ('IPC' for short) on the accusation that on 5.5.1986 when

he was serving as a Head Constable at Ratanpur Out Post of Valbhipur Police Station in Bhavnagar District, he was a public servant and in his said capacity, demanded illegal gratification of a sum of Rs.1,000 from the complainant - Popatbhai Kanjibhai for not lodging Chapter Case or preventing the Chapter Case being filed against him and pursuant to the said struck down dealing, has accepted illegal gratification of Rs.1,000 on 6.5.1986 from the complainant Popatbhai by calling the respondent at his house situated at Patna. The learned Special Judge by order dated 29.6.1992, acquitted the respondent. Thereby feeling aggrieved the State of Gujarat has knocked the doors of this Court by filing this appeal.

2. Briefly stated the prosecution case is as under:

2.1. One Popatbhai Kanjibhai Chauhan, resident of Valbhipur was serving as a diamond cutter in the factory of Manjibhai of Patna. About ten months prior to the incident, he was relieved from the said factory of Manjibhai. Therefore, said Manjibhai was displeased with him and he was demanding outstanding amount which was paid to him in excess while he was serving with Manjibhai. Said Manjibhai had sent one Kalyansinh Rajput for demanding the said amount from the complainant. Therefore, the complainant became afraid and lodged a complaint before Valbhipur Police Station and copy thereof was sent to District Superintendent of Police, Bhavnagar. During the investigation of the said complaint, Police Sub Inspector Mr. Jadeja also visited Valbhipur and obtained signature of the complainant Popatbhai on a piece of paper and one Head Constable Simariya also accompanied the Police Sub Inspector Mr. Jadeja.

2.2. It is further alleged that after 15 days thereafter the Police Head Constable Mr. Simariya of Ratanpur came to his village at Patna and informed that Manjibhai has lodged a complaint against him and, therefore, he was to be taken to the police station. One week prior to lodging of complaint, again the Head Constable Mr. Simariya took the complainant to Valbhipur Police Station and threatened him by saying that case was to be lodged against him and if he wanted to save himself from the clutches of the same he has to understand. Thereafter again on 5.5.1986 Head Constable Mr. Simariya met the complainant at the bus stand and demanded Rs.1,000 if he wanted to save himself from the clutches of the Chapter Case. The complainant showed his unwillingness to pay the amount as the said amount was out of his capacity. Even said Mr. Simariya threatened

him and told that he will come to his residence on the next day to collect the said amount and asked the complainant to make necessary arrangement in that record and he will not pay the amount then case would be filed against him. The complainant was not ready to pay the said amount to Head Constable Mr. Simariya. Therefore the complainant approached Office of the Anti Corruption Bureau, Bhavnagar and told that he is not in a position to make necessary arrangement for the said amount and told that he was having only Rs.100 with him and he will not be in a position to arrange for the remaining amount of Rs.900 for laying trap. However, for arranging the trap against said Mr. Simariya he has given a complaint before the ACB Bhavnagar which is on record at Ex.11.

2.3. The said complaint was recorded by Police Inspector Mr. Trivedi of ACB Bhavnagar and signature of the complainant was obtained beneath the same who initiated to lay trap against the respondent. As the complainant was unable to pay Rs.900 which was to be supplied by complainant, he arranged the said amount of Rs.900 from ACB Office Rajkot by sending message on phone and pursuant to the message a constable Mahendrasinh from ACB Office Rajkot came with an envelope containing Rs.900 and Mr. Trivedi, Police Inspector decided to lay the trap on the next day as as per the information given by the complainant, respondent was to come on that day.

2.4. On the same day evening he sent a message to Sales Tax Office for sending two persons who can act a panchas in the ACB Trap and pursuant to the said message, the Daxendra Mehta and Pankaj Trivedi who were serving in the Sales Tax Office were called by the officer and inquired whether they were prepared to act as panchas and as both of them agreed to act as panchas they were called on the next day i.e., 6.5.1986. All of them assembled in the ACB Office and they were introduced to each other. The complainant was asked to narrate his grievance in short. Signatures of the panchas were also obtained beneath the same which was recorded on the previous day. It is further alleged that the complainant has paid Rs.100 (one currency note of Rs.100 denomination) and amount of Rs.900 which were called for from the office of ACB Rajkot were also produced there and in all Rs.1,000 was arranged. Number of the said notes were also mentioned in the panchnama. The said currency notes were shown to all the members of the raiding party including the panchas and complainant. Thereafter usual experiment with anthracene powder was made on the currency notes by explaining all of them the use and characteristics of anthracene powder. Thereafter the currency notes were

smearred with anthracene powder which was shown in the UVL to all the members of the raiding party. Thereafter first part of the panchnama was prepared as per the narration of the panchas.

2.5. After the first part of the panchnama was over, currency notes were put in the pocket of the bush-shirt of the complainant and he was instructed not to touch the said currency notes till it is demanded by the respondent. Panch No.1 was also instructed to remain with the complainant and to see the actual transaction and on completion of the transaction it was agreed to give signal by the complainant to the members of the raiding party.

2.6. After completing the formalities, the convoy started from ACB Office in Government jeep for going to Patna at the house of the complainant and after reaching there all the members of the raiding party took their respective position in the immediate vicinity of the complainant and the complainant and panch No.1 was waiting for the respondent to come.

2.7. It is further alleged that thereafter respondent came in uniform and demanded and accepted bribe of Rs.1,000/- in presence of panch and thereafter on receiving signal, members of the raiding party assembled there and encircled the respondent and introduced themselves as officers of ACB. Thereafter the currency notes were recovered from one handbag (portfolio) which was in the hands of respondent. Through panch No.1 the said currency notes were recovered and usual experiment with the help of UVL was performed and showed to all the members of the raiding party including the complainant and the panchas and they were the same currency notes which were produced by the complainant and Police Inspector Mr. Trivedi i.e., Rs.100 produced by the complainant and Rs.900 which were called for by Mr. Trivedi from ACB Office Rajkot and even the numbers were also tallied. The handbag where the currency notes were found was also recovered and usual experiment was carried out on the same which was also shown to all the members of the raiding party. Hands of the complainant and the respondent were also seen in UVL where anthracene powder mark was noticed. Thereafter the second part of the panchnama was over.

2.8. After completing the raid, they came back to Valbhipur Police Station and recovered the record of the Chapter Case. Statements of the witnesses including the complainant were recorded. After reaching the office of

ACB Bhavnagar offence was registered against the respondent/accused.

2.9. Later on necessary sanction was obtained for prosecuting the respondent for the offence alleged and on completing necessary investigations the accused was produced alongwith charge-sheet before the learned Special Judge, Bhavnagar.

2.10. The charge was framed by the learned Special Judge which was read over and explained to the accused to which he pleaded not guilty and claimed to be tried and therefore there respondent/accused was put up on trial.

2.11. In order to bring home culpability of respondent/accused, prosecution has relied upon oral testimony of following witnesses:

- (i) P.W.1, Popatbhai Kanjibhai (complainant) Ex.10,
- (ii) P.W.2, Daxendra Kantiprasad Mehta (Panch) Ex.12,
- (iii) P.W.3, Ghanshyambhai Babubhai Parmar (a clerk in the office of Mamlatdar, Valbhipur), Ex.22,
- (iv) P.W.4, Danabhai Najabhai Manjaria (Circle Police Inspector, Bagsara), Ex.28, and
- (v) P.W.5, Mahipatrai Manishanker Trivedi (Investigating Officer) Ex.30.

2.12. Besides oral testimony, prosecution has also placed reliance on the documentary evidence, i.e., complaint, panchnama, latter of sanction to prosecute the accused, etc.

2.13. Thereafter statement of the accused under Section 313 of the Criminal Procedure Code, 1973 to enable the respondent to explain the circumstances arising against him was recorded. Respondent pleaded not guilty and reiterated that he is innocent and he is entrapped in the raid at the instance of the complainant Popatbhai. He has also filed a written statement which is on record at Ex.32 wherein inter alia it is stated that he was investigating a Chapter Case lodged against the complaint which was entrusted to him by Police Sub Inspector Mr. Jadeja. Mr. Jadeja also instructed him to settle the mater between the parties amicably. Thereafter after taking over the investigation, he went to Patna and called there respective parties and negotiated with them. The complainant Popatbhai and the applicant of that Chapter Case Mr. Manjibhai with whom Popatbhai was working both were called in the office of Panchayat and settled the matter between them and as per the settlement Rs.10,000 was to be paid by the complainant to Manjibhai

and the payment by way of instalments was also agreed between the parties. Thereafter the statement was recorded in presence of Police Sub Inspector Mr. Jadeja and then he made a report to Valbhipur Police Station for closure of the case as the matter was settled. He has further inter alia stated in his written statement that in April 1986 again Police Sub Inspector Mr. Jadeja entrusted an application pertaining to the Chapter Case and Mr. Jadeja informed him that the complainant Popatbhai was not paying the amount of instalments as per the agreed terms and he is likely to commit breach of peace in that area by picking up quarrel with Manjibhai and, therefore, Chapter Case was again lodged and notice was issued on 5.5.1986 against the complainant and his brother. Therefore the complainant was displeased with him and annoyed. It was further stated that again on 5.5.1986 he went to Valbhipur Police station whereupon Police Sub Inspector Mr. Jadeja instructed him to go to Patna on 6.5.1986 where Popatbhai would pay the amount of Rs.1000 towards instalment to be paid to Manjibhai. He also instructed that during that transaction he has to remain present and see that no breach of peace takes place there and therefore, he remained present on 6.5.1986 at 8 O' clock at the house of Popatbhai where a cup of tea was offered to him and meanwhile conversation took place between Manjibhai and Popatbhai and thereafter Popatbhai took out currency notes of Rs.1000 and gave in the hands of the respondent and he asked the respondeat to count the same and while there respondent was counting the currency notes, members of raiding party gathered there, encircled him and therefore he was falsely entrapped in the case which was initiated at the behest of the complainant who was displeased with him as he was investigating into the Chapter Case filed against him by Manjibhai. Lastly he reiterated that he is innocent and he has neither demanded nor accepted illegal gratification.

2.14. On evaluation and appreciation of the evidence, oral testimony and the documents and considering the written statement, the learned trial Judge has recorded following findings:

- (i) Explanation offered by accused in further statement under section 313 of the Criminal Procedure Code and written statement Ex.32 is contradictory. Therefore the defence version is not acceptable as it does not appear to be true. However, the learned trial Judge has observed that merely because the defence version is not acceptable or swallowable, by that itself the

case of the prosecution does not automatically stand proved against the accused and the prosecution has to stand on its own leg.

- (ii) From the evidence of prosecution, the basic ingredients of the demand is not proved as the P.W.1, complainant's evidenced is not clinching to prove the contents of the complaint.
- (iii) Evidence of panch is also suffering from infirmities.
- (iv) Evidence of the complainant and the panch is not consistent.
- (v) The Chapter Case was already lodged against the complainant and therefore there was no question of not initiating Chapter Case against the complainant and saving him from the clutches of Chapter Case and hence the very motive of the case is not proved.
- (vi) Accused tried to help Manjibhai for getting his outstanding dues from the complainant and thereby he has misused his powers in his capacity as a Police Head Constable which was outside the scope and purview of his duties.
- (vii) The amount which was found from the accused was not bribe money but was of amount which was due from the complainant to Manjibhai.
- (viii) Prosecution has failed to prove charge against the accused.

In view of the aforesaid findings, the learned trial Judge recorded the order of acquittal which has given rise to the present appeal before us.

3. Learned A.P.P. Mr. B.D. Desai appearing on behalf of the appellant- State has submitted that totality of the evidence on record clinchingly prove the charge levelled against the accused. According to him there is sufficient evidence on record with regard to demand and acceptance of illegal gratification of Rs.1000 by the accused with a view to favour the complainant by not lodging chapter case or saving him from the clutches of issuance of process in Chapter Case. Therefore he being a public servant has committed offence under the Act and in this regard evidence of the complainant P.W.1 and panch P.W.2 is so clear which unerringly pointing towards the guilt of the accused. However, learned trial Judge has erroneously and wrongly recorded acquittal which requires to be quashed and set aside by allowing the appeal and holding that the accused is guilty for the charge levelled against him.

4. In counter submission, learned advocate Mr. G.D. Bhatt contended that the basic ingredients demand of bribe is not proved and once the demand is not proved, the prosecution cannot prove the second ingredients of acceptance as both are interwoven. He further submitted that the complaint at Ex.11 is not proved as P.W.1 has not deposed as per the statement made in his complaint and on scanning the evidence of the panch also there is no evidence with regard to demand and acceptance of illegal gratification. Besides this, both the panchas are from the same office i.e., Sales Tax Office and hence they were specifically selected for the very purpose and in these circumstances no reliance can ever be placed on the evidence of the complainant's statement. In view of the aforesaid state of affairs, according to him, prosecution has failed to prove the charge levelled against the accused and, therefore, the learned trial Judge has rightly recorded the order of acquittal which does not require any interference by this Court. Therefore, he prayed that the appeal may be dismissed.

5. At the outset it cannot be disputed even by the defence that the accused Simariya was serving as a Head Constable at Ratanpur Out Post of Valbhipur Police Station of Bhavnagar District at the relevant time and therefore he was a public servant. A copy of the letter granting sanction to prosecute the accused is produced on record at Ex.25. This shows that sanction to prosecute the accused is given by District Superintendent of Police, Bhavnagar, under the provisions of Section 6 of the Act. In view of the aforesaid document, it is duly proved that valid and legal sanction was accorded to prosecute the accused.

6. The case against the accused is with regard to demanding and acceptance of illegal gratification of Rs.1,000/- in his capacity as public servant in discharge of his official duty from the complainant with a view to help him by not initiating Chapter Case or to save him from the clutches of issuance of process of Chapter Case which was lodged by Manjibhai.

(a) The ingredients of charge under Section 161 of the Code and under Section 5 (2) of the Act may be briefly narrated as under:

- (i) That the accused were public servants;
- (ii) That they must be shown to have obtained from any person any gratification;
- (iii) That the gratification should be other than legal

remuneration as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show in exercise of his official function favour or disfavour to the person.

(b) When the first two ingredients are proved by the evidence, a rebuttable presumption arises in respect of the third ingredient and in absence of proof of first two ingredients, the presumption does not arise. On mere recovery of certain amount from a person or accused, without proof of payment on behalf of such person to whom official favour was to be shown the presumption cannot arise (vide *Sitaram v. State of Rajasthan*, AIR 1975 SC 1432).

(c) It must also be remembered that Section 161 of the Indian Penal Code does not require that the public servant must in fact be in a position to do the official act, favour or service at the time of the demand or receipt of the gratification. To constitute an offence under this section, it is enough if the public servant who accepts the gratification, takes the same by inducing a belief or by holding out that he would render assistance to the giver 'with any other public servant' and the giver gives the gratification under the belief. It is further immaterial if the public servant receiving the gratification does not intend to do the official act, favour or forbearance which he holds himself out as capable of doing (vide *Chaturdas Bhagwandas Patel v. State of Gujarat*, AIR 1976 SC 1497).

(d) Another important test which must be remembered is that where the recovery of money coupled with other circumstances leads to the conclusion that the accused received illegal gratification from some person, the Court would certainly be entitled to draw the presumption under Section 4 (1) of the Act. Even under Section 114 of the Evidence Act, the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, in their relation to the facts of the particular case (vide *Hazarilal v. The State Delhi Administration*, AIR 1980 SC 873).

(e) Where in a trap case the Judge magnifies every minor detail or omission to falsely or throw even a shadow of doubt on the prosecution evidence, then it would be the very antithesis of a correct judicial approach to the evidence of witness in a trap case. Indeed, if such a harsh touchstone is prescribed to prove such a case, it will be difficult for the prosecution to

establish any case at all (vide State of Maharashtra v. Narsingh Rao Gangaram Pimple, reported in AIR 1984 SC 63.

(f) Thus, the Court of Special Judge or the Court of appeal hearing the appeal against the judgment and order of the Special Judge should invariably be aware of the correct judicial approach and see that it does not enter into an exercise of magnifying minor details and omissions only with a view to falsify witnesses and throw overboard the prosecution case.

7. Keeping the aforesaid principles in forefront, we may now advert to the evidence on record to find out whether the prosecution has successfully established the case beyond reasonable doubt that in his capacity as a public servant the accused demanded and accepted illegal gratification from the complainant.

8. Now, advertng to the evidence of the P.W.1, complainant at Ex.10, it may be appreciated that he has not denied that he was working with Manjibhai in past in his diamond cutting factory and as both of them had difference of opinion with regard to settlement of accounts and Manjibhai abused him and thereafter lodged criminal case against him and during that time Mr. Jadeja was Police Sub Inspector at Valbhipur Police Station and accused was serving at Ratanpur Out Post. He has inter alia testified that both of them called him for entering into a compromise with Manjibhai. He has agreed to make payment by instalments and both of them insisted him for payment immediately but he insisted to make payment on instalments and therefore both of them abused him and gave threat to tie him with running motor and drag him. As he was afraid with the said threat, he left the village and went to Botad and started working in a diamond cutting factor of Fulabhai. His previous master Manjibhai in company of accused Maganbhai Simariya came there and he was brought at the office of the Police Sub Inspector Mr. Jadeja. There also Mr. Jadeja gave him threat and asked him to pay Rs.1000 to Manjibhai and to make necessary arrangement in that regard and they would come at his place on the next day at 9 O' clock. He further inter alia testified that accused demanded bribe and therefore he lodged the complaint before the ACB Office Bhavnagar. It may be appreciated that in his cross-examination he has admitted his relation with Manjibhai and lodging of complaint by him against Manjibhai wherein he has alleged that Manjibhai has demanded Rs.10,000 from him and gave threat to him in that regard. He has further stated that at the intervention of Mr. Jadeja, matter between both of them

was settled and as per that settlement he has to pay an amount by way of instalments.

9. On overall appreciation of the evidence of the witness - the complainant Popatbhai it could be seen that he has given total go-by to his complaint at Ex.11. In his oral evidence he has nowhere stated a single word with regard to the demand of illegal gratification made by the accused. He has also nowhere stated about the presence of the panchas during the raid and when the amount was accepted by the accused Police Inspector, ACB, Mr. Trivedi was present and the accused was arrested and in presence of Mr. Trivedi this transaction had taken place. From his evidence it could be divulged that amount of Rs.1000 was paid to the accused for making payment to Manjibhai which was agreed between him and said Manjibhai by way of instalments. It is also seen from his evidence that the accused acted as per the instructions of Police Sub Inspector Mr. Jadeja. It is also seen from his evidence that he has also lodged a complaint against Manjibhai for giving threat to him which was settled at the intervention of Police Sub Inspector Mr. Jadeja. Therefore, there is no clinching evidence with respect to demand made by the accused.

10. Now, adverting to the evidence of P.W.2 (Panch No.1), Daxendra Kantiprasad Mehta, Ex.12, he inter alia testified that he was serving in Sales Tax Office as Sales Tax Inspector, Bhavnagar Division. On 5.5.1986 his immediate superior Mr. Antharia called him and his colleague Mr. Pankajkumar in his chamber and they were instructed to attend the trap arranged by ACB Bhavnagar. Therefore, at the instance of their immediate superior they attended. He further stated that in between 9 - 10 O' clock he and the complainant Popatbhai were sitting at the ota of the house of the complainant. At about 10 O' clock, the accused came in uniform with one black coloured handbag. The police constable asked the complainant whether arrangement is done. Popatbhai replied that arrangement is made and thereafter he took out currency notes and gave to the policeman Simariya and he took the same from his right hand and counted them and put inside the handbag with zipper and after giving signal members of the raiding party alongwith Police Inspector Mr. Trivedi arrived there and recovered the currency notes from the accused which were the same currency notes which were smeared with anthracene powder.

11. On overall appreciation of the evidence of the panch witness it is seen that the venue of acceptance of the currency notes was outside the house in the ota of

the house of the complainant while according to the complainant the transaction took place inside the house. It is also seen that he has not stated in his evidence that offering of tea by complainant to the accused which was prepared by the wife of his tenant and thereafter pan was also offered to accused and then requested the accused to convey to Mr. Jadeja not to harass him in future. Had he been a witness to the incident, he would have stated all these facts in his evidence and absence of these facts in his evidence clearly indicates that he was not present at the time of trap.

12. One more infirmity found from his evidence is that he does not remember who was writing the panchnama. They have also not put their signature on the currency notes. The Investigating Officer Mr. Trivedi has also not put his signature on the currency notes. He has also stated that on the muddamal handbag his signature was not obtained. Another infirmity which could be noticed is that before accepting him as panch Investigating Officer has not inquired about his independence. It is true that he is a Government servant. It is settled legal position by catena of decisions of the Honourable Supreme Court that merely panch is a Government servant that fact by itself is not sufficient to discard his oral testimony. But before accepting him as panch by Investigating Officer, necessary inquiry with respect to his independence must be carried out.

13. In view of the aforesaid evidence, no reliance whatsoever can be placed on the oral testimony of the panch witness as he is also infirm witness as his evidence is not consistent with the evidence of the complainant.

14. Even if it is assumed that the evidence of the complainant is true with respect to the acceptance of Rs.1000 in that case also the prosecution has failed to establish that this amount was demanded by the accused as a bribe for not lodging complaint. On the other hand, evidence is the other way round. Chapter case was already filed and summons were also issued and served to other respondents except the complainant. There is clinching evidence that this amount was paid by the complainant to the accused by way of instalment which was to be paid to Manjibhai as per the previous deal which was made between himself and Manjibhai at the intervention of Police Sub Inspector Mr. Jadeja.

15. Now coming to the evidence of the Investigating Officer, it is seen that the complainant was having only

Rs.100 and he could produce only Rs.100 and remaining Rs.900 was arranged by him by calling the amount from the office of ACB Rajkot. According to us, supply of currency notes from the Government fund is not desirable in the eyes of law in view of the pronouncement of the Honourable Apex Court in this regard. In this regard reference can be had to the following decisions of the Honourable Supreme Court in the case of Shiv Bahadur Singh v. State of Vindhya Pradesh, AIR 1954 SC 322 in which the Honourable Supreme Court has observed thus:

"It may be that the detection of corruption may some times call for the laying of traps, but there is no justification for the police authorities to bring about the taking of a bribe by supplying bribe money to the bribe-giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is no part of their business to provide the instruments of the offence."

This principle is followed by the High Court of Madhya Pradesh in the case of Narayan v. State, AIR 1956 Madhya Pradesh 52, wherein the Court has observed as under:

"Practice of supplying decoy witness with Government money for bringing about the completion of offence deprecated."

In the instant case also currency notes of Rs.900 were supplied by the Investigating Officer from Government fund and in view of the settled principles of law this practice is required to be deprecated. Therefore, on analysis of the prosecution evidence, following highlights would emerge:

- (i) Accused was a public servant.
- (ii) There is legal and valid sanction accorded by the competent authority to prosecute the accused which is on record.
- (iii) The complainant's evidence suffers from grave infirmities.
- (iv) The complainant has given total goby to his complaint.
- (v) He has no sanctity for the truth or regard for the truth.
- (vi) From the evidence of the complainant it is seen that he was displeased with the accused as he and the Police Sub Inspector Mr. Jadeja intervened between him and Manji with whom he was previously working and both of them tried to extract

outstanding dues of Manjibhai from him.

- (vii) It is also seen from the evidence of the complainant that the amount which he has paid to the accused was by way of instalment which was to be paid to Manjibhai by him and taking advantage of this situation, he arranged the trap with the help of ACB Office Bhavnagar. Therefore he is a wrong doer and his evidence does not inspire any confidence.
- (viii) So far as panch No.1 is concerned, he and the second panch is from the same office and they were sent by their immediate superior and Investigating Officer has accepted them as panchas without making inquiry about their independence. It could also be noticed that they were forced to attend the trap.
- (ix) Evidence of the panch witness is not consistent with the evidence of the complainant on material aspects.
- (x) Even if the evidence of the panch witness is accepted then also it proves only the acceptance and that too acceptance of the amount which was due from the complainant to Manjibhai. Therefore the said amount cannot be called as an amount of bribe which was paid by the complainant to the accused.
- (xi) The complainant and panch No.1 both are infirm witnesses to such an extent that no witness can cure the basic infirmity found in the evidence of the complainant.
- (xii) Panchas are brought to corroborate the evidence but when the evince of panch also suffers from the basic infirmity he is also an infirm witness.
- (xiii) Panch does not remember who was writing panchnama and therefore he is not the author of the panchnama.
- (xiv) It is settled legal principle that one infirm witness cannot corroborate another infirm witness.
- (xv) Investigating Officer has also over acted by calling currency notes from the office of ACB Rajkot and the said practice is deprecated by the Honourable Supreme Court.
- (xvi) None of the witnesses examined by the prosecution can be said to be witness of sterling quality.
- (xvii) Police Sub Inspector Mr. Jadeja and accused Simariya have over acted or travelled beyond the scope of their duty and helped Manjibhai in getting his outstanding dues from the complainant. The said fact is also highlighted by the learned trial Judge in paragraph 19 of his

judgment and criticism was made against the said Act of Mr. Jadeja and the accused Simariya.
(xviii) Motive is not established because chapter case was already filed and summons were also issued.

16. In view of the discussion made above and in the facts and circumstances of the case, it is abundantly clear that the evidence adduced by the prosecution is unreliable and untrustworthy to base conviction against the accused and in these circumstances we are of the opinion that the prosecution has miserably failed to prove the case against the accused beyond the shadow of doubt. We are also of the opinion that in the set of facts and circumstances of the case, no other conclusion is possible except the one reached by the learned trial Judge and, therefore, the learned trial Judge has very rightly appreciated the factual and legal aspects of the case and has very rightly recorded the order of acquittal which cannot be disturbed or upset at the hands of this Court.

17. In the premises, the prosecution has not been able to bring home the charge levelled against the accused/ respondent. Hence, the appeal being devoid of any merits, it fails and deserves to be dismissed and accordingly it embraces with the order of dismissal. Bail bonds shall stand cancelled and sureties are discharged.

(karan)